PART I

Contemporary challenges of public policy and administration

A global perspective

Introduction

This first part of the handbook highlights key challenges of contemporary public policy and administration. In particular, how for the first time in history there is an explicit and prominent global dimension to both the study and understanding of policy and administration, and to its practice. The part introduces key ideas and debates that will help students understand the fascinating world of policy and administration, and guide practitioners in government around the world in their daily work.

Graeme Hodge from Australia, in Chapter 2, “Public policy and administration in an era of regulatory capitalism”, proposes that a defining feature of current public policy and administration is regulation. Indeed, Professor Hodge argues that the world has entered the age of regulatory capitalism and that this forms an overarching theme for public policy and administration scholars. This theme is taken up in the chapters that follow in this part, as well as chapters in the second and third parts of the book.

Chapter 2 makes clear that regulation exists to increase trust; whether it is in the arenas of food safety, the exchange of money, product labelling, property laws, or the rights and responsibilities of individual people or corporate entities. Regulation is one of the key features of civilization, with some of its elements – taxes, trade treaties and a regulated money supply – found as far back as the Babylonian cities of more than 5,000 years ago. There is a range of regulatory tools, from “hard” (laws passed by legislators and backed by enforceable sanctions) to “soft” (such as industry codes of practice).

Professor Hodge makes clear that in the 21st century regulation is fundamentally different in scope, importance and impact, at the national and global levels, from that of earlier eras. For instance, regulation involves many more actors than just the government, especially civil society and business organizations.

The chapter concludes that in an era of regulatory capitalism, the major debates will move beyond those that traditionally have been at the forefront: deregulation, privatization and small versus big government. Rather, debates will focus on the role of government, and how government is to be part of a larger set of overlapping regulatory webs in which public administrators compete with others to influence the behavior of citizens.
In his chapter Professor Hodge includes brief case studies on privatization, and financial market regulation. These two topics are explored in more depth in other chapters in this part, with Chapter 3 analyzing privatization in developed and developing nations, while Chapter 12 studies the regulation of finance. Most other chapters in this book return to themes raised by Professor Hodge, either by studying aspects regulation, or by using regulatory capitalism as a conceptual lens through which to view public administration and policy.

Chapter 3, “Public policy and administration in an era of privatization”, by Carina Schmitt from Germany, follows directly from Chapter 2 in analyzing the privatization of state-owned enterprises during the past three decades. As Professor Schmitt writes, privatization is not a phenomenon found only in rich democracies, but rather is as widespread in low- and middle income nations.

In comparing privatization in developed and developing countries, Professor Schmitt finds both similarities and differences. One similarity is that some sectors such as telecommunications and energy have been popular targets for privatization activities in almost all countries. A further common feature is that the greatest share of privatization revenues came from a small number of transactions. She also finds that nations follow international trends and emulate privatization policies of neighboring countries or important trading partners.

The findings of the chapter show that, in regard to privatization, developing countries face greater pressure from international bodies such as the International Monetary Fund and the World Bank. Lastly, she notes the influence of past decisions and institutions in shaping the timing and extent, thus linking with Chapter 11, which explicitly analyzes how past policy choices constrain and influence future ones.

Chapter 4, “Public policy and administration in an era of austerity: rethinking local public services”, written by Stephen J. Bailey from Scotland, analyzes the legacy of public sector debt incurred by governments over many decades of spending more than they were able to finance with their tax revenues. Professor Bailey notes that many nations face prolonged public sector austerity due to the accumulated debt. He then turns his gaze to local or municipal governments, which usually provide the services that affect citizens on a daily basis (from waste disposal, parks, road maintenance and much more). His chapter argues, in reference to Europe, but by extension to other parts of the world, that local governments must reform service delivery models. These reforms do not necessarily mean service withdrawal and privatization, but rather public administrators adopting innovate service delivery models fit for the 21st century within increasingly pluralistic social needs.

Municipalities will increasingly have to procure innovation and add social and public value by engaging a wider range of stakeholders in the co-design, co-production and co-governance of public services. The topic of new means to deliver services raised by Professor Bailey is taken up in numerous chapters in Part II of this book, which examines policy and administrative responses to global problems. For instance, collaborative government is the focus of Chapter 13, while co-production is the focus of Chapter 14.

T. J. Lah from South Korea and Yijia Jing and Peter T. Y. Cheung from China, in their chapter “Public policy and administration in an era of expansion: China, South Korea and Hong Kong”, review how public policy and administration is practiced in these three East Asian jurisdictions. They find that over the past four to five decades the three jurisdictions have broadly similar experiences in administrative restructuring in that privatization, outsourcing, downsizing and reorganization have been extensive. This is finding is in keeping with the regulatory lens that Professor Hodge introduced in Chapter 2, and the findings of Chapter 3 on privatization.

Professors Lah, Jing and Cheung also uncover another common trend: in all three jurisdictions there was a strengthening of the role of civil society and public involvement in the policy-
making process. This too fits with Chapters 2 and 4, which argue that currently there is movement in many nations to extend the roles of civil society groups, private organizations and citizens in policy-making and the delivery of government programs and services.

Chapter 5 also makes clear that in East Asia, and by extension in other parts of the world, there has been significant transformation of the role of government. In China, for example, new policies and programs for social welfare, social insurance and health care were developed, or significantly expanded, within the space of a decade. At the same time, in China, South Korea and elsewhere, government administrators have had to adjust to expanding social freedoms, citizens’ rights and a much more global economy. Later chapters in this book take up how effectively policy-makers and administrators have adapted to these new conditions.

Chapter 6, authored by Alexander Dawoody from the United States, entitled “Revolution, terrorism, and governance in the Middle East”, reviews the linkages between governance, revolution and terrorism in that region of the world. Professor Dawoody notes that the Middle East is the origin of many features of modern administration, such as writing, libraries/records, standing military forces and others, and that the first governments and public administrators (as we would recognize them) arose in that region.

The chapter analyzes the major obstacles to reforming governance structures in the Middle East including the rise of failed states, and the role of tribal and religious schisms. Professor Dawoody examines how revolutions represent the demand by large segments of the population for sound governance, better lives and a more secure future. Revolutions in the form of mass protests, demonstrations, labor strikes and peaceful gatherings arise in the absence of democratic channels and viable opposition political movements. Widespread terrorism, that is, the use of violence to impose narrow ideology on a majority, can also occur in situations where political and administrative governance fails to operate along democratic channels.

The chapter concludes by observing that democratic reforms in the region, whether imported by outsiders (as in Afghanistan and Iraq) or through revolutionary movements, face substantial barriers. Responding to these impediments, whether in the Middle East or elsewhere, is one the major challenges of contemporary politics, public policy and administration.

In Chapter 7, “Participate or be punished: administrative responses to protest”, Christopher Tapscott from South Africa, employs a case study to take readers into and behind citizens’ demands for basic socio-economic rights and services. Unlike Chapter 6, which examined mass-based protests that sought to change the political order, Professor Tapscott spotlights smaller-scale protests in which participants seek greater access to specific government services. His chapter extends the discussion of citizen participation raised in Chapter 4, and illustrates some of the limits, or at least challenges, of engaging citizens in reforming local public services.

Professor Tapscott makes explicit that while protests are recognized as a legitimate form of citizen action, they are not recognized as a valid form of interaction between citizens and government. Thus, protesters cease to be rights-bearing citizens and instead are viewed by government officials as adversaries. In examining one local government in South Africa, the chapter finds that although peaceful protest action is permitted by municipal legislation, groups wishing to demonstrate must formally apply to the local governments, which may set stringent conditions or refuse permission. When protests do occur, these are usually referred to disaster management units and the police, as there is little interest on the part of local administrative officials to address the reasons that caused the protests.

As the chapter explains, the failure by public administrators to recognize, validate and address minor protest fuels frustration and gives rise to more protests, some of which can involve violence. Thus, because the original legitimate protest action is either ignored or is dispersed by the police, protesters become angry and sometimes violent, which reinforces state stereotypes
of their behavior. Professor Tapscott concludes the chapter by noting that peaceful protest is no longer an aberration, but rather has become an entrenched form of citizen participation. Consequently, governments, especially at the local level, need more formalized structures and procedures to respond to the demands of protesters, including understanding the factors which give rise to protest.

Cheol Liu from South Korea uses Chapter 8, “Public corruption: causes, consequences, and cures”, to analyze officials using their public offices for personal gain, through behavior like nepotism, favoritism, bribery and the misuse of authority and power. Public corruption is not restricted to any one nation or region, and indeed has been a feature of public policy and administration through the ages. As Professor Liu explains, one of the major causes or prerequisites for corruption is the discretionary power that public officials have; that is, the ability or room to decide when to apply, revise or enforce regulations. For example, consider a police or law enforcement officer (a public administrator, in other words) and the discretion she or he has to issue a warning, or fine, or to take other action in a specific case such as an automobile driver exceeding the posted speed limit.

Following on from Chapter 2 on the increasing importance of regulation, and from Chapter 3 on privatization, Professor Liu notes that regulatory activities provide particular scope for public administrators to engage in corruption. Moreover, periods of rapid privatization can increase the discretion of public officials and incentives to enrich themselves, or unfairly compete in the privatization processes.

The second part of the chapter examines the three main strategies to decrease corruption. The first is to strengthen laws and their enforcement to increase the costs and risks to public administrators of engaging in corrupt practices. The second strategy is providing public officials with sufficient incentives and compensation, such as wages, bonuses and performance pay, for them not to engage in corruption. The last strategy is to reduce the discretionary power of public officials, for example by increasing transparency, so as to diminish opportunities for corruption.

Chapter 9, by Yoon Jik Cho from South Korea, entitled “Trust in public organizations”, continues with a theme raised in Chapter 2: how to ensure and increase trust. Trust is essential in the interaction of public administrators (and politicians) with citizens, but also within public sector organizations. Professor Cho’s focuses on interpersonal trust within organizations, and discusses why trust matters and how it works in the context of public organizations.

Trust is a key element in all organizations but, as Professor Cho explains, even more so in public administration where it is used to motivate individuals, increase performance of employees, reduce uncertainty, facilitate innovation and much more. Chapter 9 links directly with Chapter 8 in that a high level of trust is critical in reducing corruption. For example, an organization whose members have trust among themselves (and with their clients) will exhibit altruistic behaviors in that individuals will assist others without expecting a reward for doing so. More generally, when the trust level is high, employees are more likely to follow organizational rules and procedures.

The chapter concludes by reminding us that, as with many other characteristics, too high a level of trust may have negative consequences. For instance, under very high levels of trust, organizational members are so closely connected that they may hesitate to raise problems (whistle blowing, for example), or become reluctant to accept external criticism against their organization.

In Chapter 10, “Global aging: understanding its challenges”, Masa Higo from Japan explores one of the defining features of public policy and administration of the 21st century: namely, rapid population growth that has impacted developed nations, and will have even greater impact
on developing nations. Professor Higo, living in a nation where one of every four people is 65 and older, provides an overview of the rapid demographic shifts that are found in every region of the world.

The chapter makes clear that while population aging is a global trend, it progresses differently by region, at least in the timing and speed of the increase in the population’s share of older people. For instance, in many developing countries, population aging is taking place at a much faster rate than was the case for developed countries. As a consequence, in the coming decades, global aging will involve greater risks in later life for people in many developing countries, while public administrators will struggle to provide adequate health care and income security.

Professor Higo illustrates how global aging, and the policy decisions of individual nations, has started a global labor market for a long-term care workforce. That is, many developed (and richer) nations currently face shortages of long-term care workers to aid their elderly population, and have implemented immigration policies to attract health care workers such as nurses’ aides from other parts of the world. Thus, governments of some developing (and poorer) countries – notably the Philippines – have encouraged their younger workers, women in particular, to migrate to developed countries as long-term care workers for older people.

Professor Higo concludes with the need to formulate global-scale policies in response to the growing risks of securing socio-economic resources for supporting older people. He notes that although some international organizations, such as the United Nations, have sought to address these issues, much more effort is required for collective – that is global – policy, governance and programs that aim to protect the well-being and survival of older people in both developed and developing countries.

In Chapter 11, “Public policy and administration: tradition, history and reforms”, Edoardo Ongaro reviews the influence of past decisions and policy choices on administration and public policy. His starting point is that past choices about the structure and processes of government – for example, whether universities are public or private in a country – have long-term effects. That is, there is path dependency, in that once a decision has been made and implemented, further decisions must generally conform to the pattern or path that the earlier decision, or policy choice, set into motion.

Professor Ongaro begins by analyzing why past choices about the structure and processes of government cause present effects. He then goes on to explain how – notwithstanding the constraints of the past – dramatic change does occur in public policy and public administration. Such abrupt or radical change can arise from a number of sources: external shocks or the accumulation of a series of small changes that ultimately lead to a fundamental change.

The second part of the chapter turns explicitly to explaining changes that occur to public administration (rather than policy). In this regard, the chapter presents two models. The first model places contextual influences at the core, such as the relationship between politicians and senior public servants. The second model uses the concept of administrative tradition, a set of basic traits that characterize the public administration of clusters of countries, as the key in explaining reforms. The chapter concludes by analyzing the extent to which two models can be applied globally; that is, beyond mainly Western European or Anglo-American nations.

Chapter 12, by Ian Roberge and Heather McKeen-Edwards from Canada, “Decentered policymaking and regulatory finance”, completes this section of the handbook by analyzing the regulation of financial markets and institutions. The chapter links directly to Chapter 2 (which proposed that regulating capitalism has become a key – if not the central – role of government) by examining regulation, re-regulation, deregulation, non-regulation and self-regulation in the financial sector. Professors Roberge and McKeen-Edwards focus on the 2007–2008 global financial crises and aftermath to reveal the complexity of policy-making.
The chapter begins by outlining the two major justifications for financial regulation; that is, for the government making rules for banks, investment, insurance and other financial industries. First, that an effective financial system is central to the health of the overall economy; second, that supervision and regulation prevent or minimize market breakdown, which could have spillover effects on the larger economy.

As explained in the chapter, regulation of the financial services is characterized by complexity, fragmentation, interdependencies and the rejection of a clear public/private dichotomy. Each of these is analyzed in the chapter; for example, the fast-pace of change and innovation in technology, products and services. The chapter also notes that although financial services are to some extent globalized, they are also fragmented in that there is no single financial services sector, but rather a collection of industries: banking, investment and insurance.

In tracing global financial supervision and regulation during the past six decades, Roberge and McKeen-Edwards deduce that without government intervention, the global financial crises of 2007–2008 likely would have been much worse. However, they also conclude that new and innovative forms of regulation are required to prepare for the next crises. However, the authors remain skeptical – in part because of the constraints of past policies that professor Ongaro reviewed in Chapter 11 – that new forms of regulation in fact will be implemented.

Thus, the chapter and section conclude with a return to the theme of Chapter 2; namely, that the defining feature of contemporary public policy and administration is the regulation of capitalism, but that it remains uncertain whether public officials have the tools, knowledge and scope to introduce the kind of innovative regulation and service delivery that are demanded by civil society and other groups.
2
PUBLIC POLICY AND
ADMINISTRATION IN AN ERA
OF REGULATORY CAPITALISM

Graeme Hodge

Introduction
Public administration and public policy have proud, long pedigrees. Our shared history of both
(Lynn 2005; Parsons 1995) reveals cutting-edge developments in understanding bureaucracy
and its administration as an effective organisational machine for both public and private purposes,
as well as the subsequent advances in new public management (NPM), notions of post-NPM
government (Halligan 2009), and networked arrangements amidst the complexity of today’s
governance systems (Klijn 2008). Past decades have been littered with public policy initiatives
which have been successful if we look at education, pension plans, disease control and economic
growth, as well as unsuccessful, from our experience in drug control, paedophilia and internet
bullying. Importantly, many areas of public policy, such as privatisation for example, have also
seen high expectations and political promises dashed under the weight of more limited real-
world reform outcomes.

But is governing today really that different from governing in past eras? The past few decades
have been marked by loud calls for better regulation and reduced regulatory burdens on
business. Our post-Global Financial Crisis (GFC) environment has certainly seen much chatter
about how governments should more strongly regulate the financial sector. Yet these pressures
exist alongside continuing calls for deregulation. The tensions in this opposing rhetoric are
palpable. At the same time, commentators have implored us to rethink the state, reinvent it,
commercialise it, join it up and have it act more as a partner through better networked capability.
Commentators have also told us that we were increasingly in the grip of the audit society
(Power 1999), the evaluative state, the welfare state and, more recently, the regulatory state.
Meanwhile, commodity and financial market engines have provided spectacular growth and
rising wealth for many, and some began almost worshipping the apparent wealth-generating
powers of markets. Post-GFC, however, we now know that bigger forces were at work and
that harder lessons needed to be acknowledged about the behaviour of less than perfectly
rational consumers in markets as well as governing markets that were themselves imperfect.
Getting governments and policy tools, such as markets, to serve the needs of citizens continues
to be a profound challenge today.
This chapter suggests that we have entered the age of regulatory capitalism and that this forms an overarching theme for public policy and administration scholars. The chapter begins by exploring the nature of regulation, and what can be learned from the cross-disciplinary contestation on this issue. We then examine the lenses of regulatory capitalism and regulatory governance, and look closely at how such lenses fit into contemporary questions facing governments. Overall, the chapter argues that a regulatory lens is a different and productive way to slice the public administration and public policy cake. Subsequently, it is suggested that broader notions of regulation help interpret many public policy topics, and help in reconsidering the role of government. Four brief case examples are discussed; privatisation, public–private partnerships (PPPs), financial market regulation and regulating the water sector. The chapter then reflects on how the success of contemporary government depends on better understanding regulation at the levels of policy and of governance, before making conclusions. So, what is regulation and how might it be reconceptualised?

**Changing notions of regulation**

At its heart, regulation exists to increase trust, whether oriented towards food safety, the exchange of money, product labelling, property laws, or the rights and responsibilities of individual people or corporate entities. Parker and Braithwaite (2003) note regulation through taxes as probably being 5,300 years old and older than state law itself. Braithwaite and Drahos (2000) comment that Babylon had a legally regulated money economy in the third millennium BC, that trade treaties with Rome existed in 509 BC and that early Roman civil law had food laws looking at weights and measures, economic loss, labelling and fraud.

The idea of regulation has been heavily contested and rethought over the past three decades, however, with profound implications. There are a wide variety of different concepts and definitions of regulation. Two ideological extreme vantage points are possible: at one end, regulation might be characterised as ‘a dirty word representing the heavy hand of authoritarian governments and the creeping body of rules that constrain human or national liberties’; and at the other, it can be viewed as ‘a public good, a tool to control profit-hungry capitalists and to govern social and ecological risks’ (Levi-Faur 2010, p. 4). Some have viewed regulation only with reference to the work of governments, whilst others have gone beyond this. Moreover, as Levi-Faur (2010) points out, disciplines have traditionally viewed regulation differently: with law scholars emphasising legal instruments; sociologists emphasising other forms of control; economists viewing regulation as a tool used only when necessary to deal with market failures; and with public administration scholars emphasising the authority of the state and its formal regulatory organisations.

Our fundamental conceptions of regulation have ranged from, at the one end, seeing regulation as a strict legal concept in which laws and regulations are determined through the legislative processes of Parliament, through to a more fluid behavioural concept in which regulation is seen as a focused attempt at controlling the behaviour of others. Contemporary regulation is now viewed as covering multiple disciplines, as decentralised and as crossing all sectors. So industry and civil society both regulate, as too does government. The traditional narrow ‘command and control’ concept of regulation has thus been broadened to include instruments and activities that extend well beyond the law. According to Black (2002, p. 26), for example, regulation is more than just rules. It is: ‘the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes’.
This broader notion of regulation has led to several important insights for public policy and governance debates. First, the modern conception of regulation encompasses a wide range of actions in terms of regulatory mechanisms and tools. These range from government acts and regulations through to codes, guidelines, standards, contracts, grants, economic incentives, information usage, markets, licenses and accreditation schemes. There is a multitude of regulatory tools and techniques now at our disposal, with black letter law being just one of these options. Moreover, if our conception of regulation has been broadened to one where regulation involves sustained attempts to alter behaviour according to standards for an outcome, then the role of regulation involves far more than simply those people employed in formal regulatory agencies. As Levi-Faur (2010: 10) put it, ‘while only few of us are acting as professional regulators, most, if not all of us, act as regulators in some capacity’. The point being made here is fundamental: if our aim is to change behaviour in a sustained way, we are regulating.

Second, not only is there a wide range of activities that can be regarded as regulatory, there are several different rationales as to why behaviour may change. Looking at how governments regulate, for instance, Freiberg (2010) lists six different pure modes. Each mode typically has dozens of different tools within it. These are shown in Figure 2.1. He explains that states may act through economic tools (such as through making markets, or by influencing markets via taxing, quotas or pricing); through transactional tools (where governments influence behaviour through contract or grant conditions for minimum wages, for example); through authorising tools (of registration, licensing, permission, accreditation or litigation); through informational tools (such as product labelling or disclosing interest rates for example); through structural tools (of physical design, or processes such as our pay as you go tax arrangements); or through the more traditional and familiar legal tools (where laws, rules and regulations are made). What is clear here is that there are a range of regulatory tools available to the government and that traditional command and control instruments, where government acts as a legislature, constitute only one of these tools. Importantly too, regulation activities may be either positive (so that particular behaviours are encouraged through incentives) or negative (where behaviours are discouraged through disincentives).

Third, under Black’s (2002) broader conception of regulation, regulation is not only made within government, but also within business and within civil society. Indeed, whilst business is not able to enact legislation, it is able to adopt many of the other tools shown in Figure 2.1. So, when business initiates just-in-time contracts, when it implements compliance systems, and when it signs contracts full of conditions aimed at influencing the behaviour of other firms or customers (in addition to precisely specifying products to be supplied), it is in one sense, regulating. Likewise, regulatory activities are undertaken in civil society when we insist on eating halal foods, use the Forest Stewardship Council to accredit products or drink coffee accredited as being produced under fair trade conditions. Regulation is undertaken in all three sectors.

The fourth insight is that the locus of regulation may be from inside government, through independent institutions or through hybrid mechanisms.1 It may also occur through co-regulation, self-regulation or even meta-regulation, where one regulatory body oversees others (as occurs with accreditation bodies for the professions, for example) who themselves do the detailed oversight. The last two decades have certainly seen the rise of the independent regulator, as noted by Gilardi et al. (2006). They found that the number of independent regulators across 48 countries increased through the 1990s by two-and-a-half times the increase over the previous three decades. Whilst regulatory agencies were not, strictly speaking, a new feature of modern systems of governance, they became a highly popular form of governing throughout the 1990s (Levi-Faur 2010: 15). Not only was it a global phenomenon, but it was also observed across both economic sectors (including utilities such as electricity or telecommunications reforms, or...
Figure 2.1 Regulatory tools available to government
Source: Freiberg (2010)
Public policy and administration in an era of regulatory capitalism

As our fifth insight, we have come to understand that regulation has not simply been the result of privatising essential public services. It has represented a more fundamental reordering of societal priorities and power. As Majone (1999) put it, regulation has essentially been recognised as a distinctive mode of policy-making and become an alternative mode of public control. This is a powerful insight. Others have pushed this notion further, suggesting that the regulatory role of government was not only an important one, but a role that was increasing (Braithwaite et al. 2007). They have noted that the work of governments broadly included three functions – providing, distributing and regulating – and observed that, whilst the government’s role in directly providing services was currently decreasing (through, for example, outsourcing and privatisation), and their role in distributing (or redistributing) wealth will continue through time, the government’s role in regulating is increasing in myriad ways. Indeed, regulation had become a policy preference of government.

The sixth insight is that regulatory activity of public matters, despite being increasingly technological and professionalised, remains an inherently political activity. Whether governments choose to regulate directly through, for example, legislation, independent institutions, monitoring and reporting regimes, markets or the employment of incentives or contracts, the choice of mechanism and the content comprising the regulatory fabric are political decisions. Moreover, regulation is preceded by policy choices in the face of public interest debates and discussion. Such choices involve, by definition, conflicts in values. Indeed, as Van de Walle (2009) rightly states, government by its nature ‘is constantly dangling in an uneasy equilibrium between competing values’. There is rarely one single ‘best approach’ in organising regulatory regimes to benefit citizens. Even a straightforward-sounding task to regulate the ‘risks of harm’ involves conflicts in values because the concept of risk itself is culturally and historically contingent. In order to understand risk, scientific calculus of actuarial risk needs to be complemented by dimensions that include the disruption of established socio-cultural patterns and valued beliefs along with political risks and threats to political power or survival (Haines et al. 2007).

Figure 2.2  Cumulative annual creation of regulatory agencies (RA) across 48 countries and 16 sectors over 88 years (1920–2007)
Source: Jordana et al. (2009)
Seventh, many useful models exist to help interpret regulatory actions. The regulatory pyramid idea (Ayres and Braithwaite 1992) has proved particularly useful. Now in use internationally, this framework is also known as the enforcement pyramid. It suggests that regulation in practice includes a range of possible actions from hard law through to soft law. The notion underpinning this framework is that the behaviour of the regulator depends to a degree on the behaviour of the regulatee, and that, in the first instance, the philosophy of the effective and responsive regulator is to initially encourage compliance and try the least cost measure. If these measures do not work, then regulatory actions taken by the regulator are escalated upwards, so that increasingly punitive and increasingly legal methods are adopted to ensure compliance. The implication of this is that much regulatory time is spent on establishing systems of compliance for ‘normal behaviour’ (through licensing and accreditation schemes, for example), and on measuring and monitoring, as well as in regulatory conversations, assessing and reporting, as opposed to formal court proceedings. And many of these activities are inherently cross-disciplinary rather than belonging to one specific group. Regulation has quietly become a cross-disciplinary professional pursuit.

In essence then, today’s conceptions of regulation are more expansive than in the past. Regulatory scholars are most interested in how behaviour is influenced and ordered. This regulatory lens acknowledges that one of the crucial functions of law is to prevent poor behaviour and encourage desirable behaviours. But importantly, no matter which regime of regulation we analyse, from food safety or smoking to teaching in universities, the actual role of law in altering behaviour is usually modest. As Colin Scott put it, ‘the behaviour of those regulated in those regimes is shaped only partly by legal rules, but also by other forms of control’ (Scott 2008). Regulatory scholars, therefore, tend to look ‘outside the court room’ and observe attempts to control, order or influence the behaviour of others. They understand that law also functions to facilitate private arrangements and government functions, settle disputes, and in addition expresses our shared values (Raz 1979: 176). They tend not to focus on legal doctrine and the text of legislative instruments, but instead debate how regulatory systems can be best designed, what tools and mechanisms work most effectively in responding to particular circumstances, and the degree to which citizens and other stakeholders see regimes as having legitimacy and credibility (Bartle and Vass 2007; Black 2008).

All of this means that a richer and more sophisticated discourse around issues of public policy and governing is needed.

The age of regulatory capitalism

So, what are the implications of rethinking regulation for discussions concerning governance and public policy? At the level of governing, one crucial argument has been that the very notion of the state as the centre of regulation is a misconception. For a start, the three sectors (state, market and civil) potentially regulate each other as well as themselves, as we hinted earlier. Businesses regulate other businesses (through contractual standards for food manufacturing or processing throughout the world, for example), and parts of government regulate other parts of government. NGOs accredit codes of conduct to assure clean or ethical business practices. International accounting bodies regulate through reporting standards. ISO develops standards that underpin law which supports trade and economic flows. And so on. Regulation, in a sense, has been decentered (Black 2001). Additionally, auditors and ombudsmen ought to be viewed as part of the growing web of scrutiny, influence and governance oversight. We inhabit a world in which our governing (and regulating) structures themselves are inherently networked and interlinked (Klijn 2008). Trust has grown, sometimes through commercial values and sometimes through democratic values.
How might modern governance systems be conceptualised and characterised? The era of ‘the regulatory state’ (Majone 1999) seems to be a popular and convincing label capturing the essence of changes in governing capitalist economies (Jordana and Levi-Faur 2004: 8). But it is also perhaps a misnomer. On the one hand, the term regulatory state ‘suggests [that] modern states are placing more emphasis on the use of authority, rules and standard-setting, partially displacing an earlier emphasis on public ownership, public subsidies, and directly provided services. The expanding part of modern government, the argument goes, is regulation’ (Jordana and Levi-Faur 2004, p. 8). But this argument is also a state-centric view in a world in which we really need to look well beyond the state to multiple overlapping webs of influence (Grabosky 1995). So regulatory regimes are complex and overlapping, with governments being only one of the influential players. This view is also accompanied by some warnings: that multiple forms of control are employed in governing capitalist economies with several modes often co-existing; that the state does not operate as the sole source of regulatory control in any event; and that the regulatory state probably has a certain multi-levelness to it both within one country as well as internationally (Levi-Faur 2010). Having said this, public policy analysts well recognise the major elements characterising the regulatory state:

- bureaucratic functions of regulation are separated from service delivery;
- regulatory functions are separated from policy-making (and therefore are placed at arm’s length from their political masters); and
- regulation and rule making emerge as a distinct stage in the policy-making process, and therefore, a distinct profession and administrative identity (Levi-Faur 2010, pp. 18–19).

Allied to this ‘regulatory state’ idea is the concept of ‘regulatory governance’. Minogue and Carino (2006) argue that ‘regulatory governance is now fully accepted as a significant part of the literature on regulation’. To them, it is an attempt to go beyond formal rules governing today’s public and private relationship to a ‘broader framework of state–market relations, and drawing on disciplinary contributions that range across economics, law, politics, and public policy and management’ (Minogue and Carino 2006: 4). This regulatory governance perspective looks inside the policy process and ‘behind the institutional façade to grasp the “real world” of public action’, as Minogue and Carino nicely put it.

Even more broadly stated again has been the suggestion that we live in an age of ‘regulatory capitalism’. Braithwaite (2008: xi) explains that whilst many people saw the state running fewer things and regulating more, some analysts started talking about the regulatory state. He continues that:

then it was recognized that many other organizational actors beyond the state were also doing a lot more regulating of other organizations than in the past, so some analysts … spoke of a regulatory society. Along came David Levi-Faur and Jacint Jordana to point out that capitalist markets had become more vibrant at the same time as regulation of markets had become more earnest.

Not only did they coin the phrase regulatory capitalism, but they also produced a large body of data showing that privatised markets and regulatory institutions had expanded beyond the West to around the world, and that markets themselves had been used as a regulatory mechanism of choice. To Braithwaite’s mind, then, we therefore saw not only ‘freer markets, more rules’ (Vogel 1996), but ‘more capitalism, more regulation’; a proliferation of new technologies of regulation; increased delegation to business and professional self-regulation and to civil society,
to international networks of experts, and to increased regulation of the state by the state (particularly for competition).

More formally, Levi-Faur (2010) describes regulatory capitalism as:

- the growth in scope, importance and impact of regulation at the national and global levels;
- the growing investments of political, economic and social actors in regulation in general and regulatory strategies in particular; and
- the emergence, extension and consolidation of hybrid forms of regulation which shape diverse and more complex forms of regulatory regime.

To him, the idea of regulatory capitalism took regulatory thinking beyond national boundaries and beyond formal state-centred rule-making. It denoted a world where regulation was increasingly also a hybrid of different systems of control, where statist–civil regulation evolved, where national regulation expanded with international and global regulation, where private regulation expanded with public regulation, and where voluntary regulation existed with coercive regimes. So not only were we dealing with the growth of the regulatory state, but also the growth in the number of civil and business actors that invested in regulation and their own business-to-business regulatory institutions and instruments.

The notion of regulatory capitalism as a way of framing modern governance systems has been a challenge to traditional social science disciplines. Braithwaite (2008), for example, argues that these ideas oppose traditional scholarship ‘preoccupied with geographically bounded political systems, legal systems and cultures’. Morgan and Yeung (2007) likewise observe that broader notions of regulation challenge those in the legal profession, and we might add traditional public administration bureaucrats as well. They posited three challenges. First, our assumption that the state is the primary locus for articulating community goals, compared with the social influence of multiple non-state, civil society and business organisations. Second, the assumption of hierarchy – that the state has final authority, compared with multiple sites of governance operating in overlapping ways rather than simply vertically. And thirdly, the assumption of centrality of rules – or, in other words, commands as the primary mode of shaping behaviour, compared to the real limitations of legal rules and potential for alternatives such as economic incentives to steer business, moral suasion, by shaming, and architecture.

The regulatory capitalism lens is thus a fresh conceptual lens through which to view the world of public action. And it has implications for interpreting our world. Braithwaite, for example, tackles the oft-told story, of the triumph of neoliberalism at the end of the twentieth century. To him, this widely believed view on the far left and the far right is nothing short of a ‘fairytales’. Neoliberalism (defined as ‘a program for destroying collective structures which may impede the pure market logic’) and its Hayekian prescriptions of small government, privatisation and deregulation did not occur. Government typically got bigger in terms of spending power and employment numbers and was not hollowed out, the state was still seen as vital to long-term economic growth prospects, and changes from state ownership to private led to more regulation, not less. Likewise, the cousin of neoliberalism, the ‘Washington Consensus’, stalled after disastrous privatisations in jurisdictions such as Russia, and the ‘Washington Consensus’ became the ‘Washington Consensus plus good governance and the rule of law’. To Braithwaite, then, regulatory capitalism triumphed, whilst neoliberalism lost the war for the hearts and minds of the world’s policy-makers. Interestingly, despite the fact that the era of regulatory capitalism had arrived rather than the alternative neoliberal prescription, those on the right still could not use the dirty word ‘regulation’.
Contemporary public policy and administration: four case studies

Despite the observation that regulation barely rates a mention in the index of many public policy handbooks, the notion of regulatory capitalism adds a sensible lens through which to view public policy. Four different theatres of public policy will now illustrate this: utility privatisation, public infrastructure delivery through public–private partnerships, the water sector and financial markets.

Utility privatisation

The field of privatisation has seen many lessons from public policy scholars (Hodge 2000; Parker 2004; OECD 2009). Although generalisations are risky, three decades of research after worldwide divestitures suggests several themes: the breadth of the privatisation phenomenon; the multiplicity of political objectives posed by governments globally; the loud ideological and almost religious fervour often accompanying privatisation transactions; the mixed empirical evidence on entity performance gains; and the recurring theme of deepening inequality in outcomes. Perhaps the bigger research lessons from the perspective of regulatory capitalism, however, have been threefold. First, the overwhelming observation has been that strong regulation mattered more than ownership, despite the obsession of advisors, economists and finance market actors with the ownership issue. In other words, governing with integrity mattered most, and getting the regulatory regime right itself was a crucial defining upfront task. We learnt that markets did not exist naturally – they required clear legal and regulatory structures to enable their very existence. Capable independent regulators had to be established and competition laws strengthened. Likewise, essential service excellence did not naturally evolve without strong regulatory standards, incentives and monitoring. Empirically, regulation was a stronger influence on better performance than changing ownership.

Having said this, though, our second lesson was that the regulation of essential services (i.e. utilities) such as electricity water and communications services was traditionally achieved through public sector ownership. In other words, ownership was the regulatory technique employed historically. This contrasts with the regulatory techniques now applied to such privatised services, including the use of markets, the establishment of independent regulatory bodies to oversee service quality, cost structures and governance matters, as well as a potentially greater recourse to the courts as well. So regulation in terms of steering and influencing the behaviour of essential service providers has always existed, but our regulatory technique has changed.

On the broader matter of public versus private interests, too, the third regulatory lesson of the past few decades is that, if we see the world in terms of simply a private versus public battle, a bigger point is missed – it is really the fabric and effectiveness of balanced regulatory arrangements that matter most. Regulatory capitalism essentially takes for granted a strong government and a strong private sector, with each interdependent on the other, rather than one dominating. As Mintzberg (1996, p. 75) argued decades ago, the so called triumph of capitalism over communism in the 1980s was not so much a triumph of the free market idea over government, but “the triumph of balance”. Or as Simon said in 1997, ‘a strong democratic society needs a dispersal of power, not one dominated by private business interests (to run government), or powerful governments (to corrupt democratic processes)’. There are myriad different versions of capitalism, but there is also no doubt that philosophically we have moved from ‘public versus private’ to ‘public and private’.
Infrastructure delivery through public–private partnerships

To some, infrastructure PPPs are the ultimate NPM tool, maximising private sector involvement through performance-oriented contracts. But after almost three decades, PPPs remain as controversial as they are popular. Public policy based lessons to date are many including the contested definition of PPP, the power of the rhetorical ‘partnership’ label, the wide range of objectives adopted to justify PPPs, the inherently political as well as complex technical nature of these arrangements, the breadth of differing contract types and financial arrangements that occur in practice, the mixed performance measured for private finance initiative (PFI) type PPPs including value-for-money (VfM), along with the clear political success of many PPP types and our continued desire to get the best of both sectors.

Using a regulatory frame, however, some additional lessons are possible. First, how the government governs (or regulates) the project throughout its long life is crucial. Second, we need to understand that the contract itself performs as a regulatory tool. Both of these issues deserve a comment. On the first matter, and much like its privatisation cousin, there is a serious governing role required in initially assessing the relative need and planning for infrastructure, developing and signing long-term infrastructure contracts (LTICs), in overseeing and monitoring the performance promises made, and in establishing formal institutional arrangements to steer medium and long-term governing decisions where any decision-making discretion occurs. For example, when the facility needs to be upgraded, when ownership changes or refinancing occurs, when contracts are found to be incomplete, when new unpredictable risks appear or when the public’s expectations or democratic demands change, the government’s role is to work for the public interest and negotiate new arrangements. There are often acute tensions between the commercial and business expectations accompanying such LTICs on the one hand, and the democratic expectations of citizens on the other, especially when a dozen or more different future governments are likely to be elected over a contract term of say 30 or 40 years. The Toronto Highway 407 Express Toll Route in Canada exemplifies this. Here, toll increases from Macquarie Bank were proposed contrary to the democratic expectations of both citizens and a newly elected government in early 2004, but they were arguably in line with the signed legal contract (Torrance 2008). In the case of Australia’s East–West Project, an incumbent government signed a $17 billion contract two weeks prior to the caretaker period and immediately prior to a state election. The opposition party campaigned that it would rip up the contract, and was then elected. The contract was eventually renegotiated, but the exercise was painful and it was high profile.

In both cases, citizens felt a direct tension between democratic values on the one hand, and commercial values on the other, given the signed, legally valid contract. They were left pondering the question ‘who governs’ when governments sign private-contract-law-based PPP contracts? We know that this question has a simple answer – ultimately, the signed private contract largely governs (Hodge 2002). But clearly there is a tension here between the government’s responsibility to properly regulate the LTIC project in the public interest throughout its life on the one hand, and the fact that the private contract itself already acts as the major regulatory tool on the other. Little wonder that some commentators view LTICs as being an illegitimate child of the PPP family and governance as the biggest challenge for PPPs (Hodge 2006; Skelcher 2010). This is particularly the case when ‘the governance of PPPs has predominantly been used to remove them from public scrutiny and informed debate, justified on the grounds of commercial confidentiality or managerial discretion’, as Skelcher (2010, p. 303) says. So, whilst complex and technocratic LTIC arrangements may have served governments well in delivering infrastructure projects, they are still seen by citizens as lacking democratic legitimacy.
The water sector

Our thoughts now turn towards regulating the water sector. This sector has a long history, often sprinkled with public policy controversies (Hodge 2007). The provision of clean water alongside the adequate management of sewerage nonetheless rate as perhaps one of the most effective professional interventions in history in terms of saving lives. In the shadow of this achievement, and with most OECD countries regulating the supply of water through public utilities (Hodge 2007), this sector has equally been criticised as being rather conservative in terms of its willingness to experiment with innovations and reforms. In recent times we have heard calls for cities to become more ‘water sensitive’, more ‘resilient’ and more ‘liveable’. Perhaps the apparent conservatism of the sector is understandable when we consider the progressively increasing demands being placed on it by the community and by the water professionals themselves. Brown et al. (2009) argue that over the past century cities have been progressively transitioning from water systems focused initially on water supply, to also incorporating drainage control, sewerage management and waterway environmental health, towards systems that represent a broader philosophy that accounts for the overall water cycle and more sophisticated water-sensitive urban forms along with a wide range of water-sensitive urban practices. The cumulative aim has been a more liveable city.

Innovation in this sector, such as encouraging the re-use of water from roof tops or private land for drinking purposes, is desirable. But how might such innovation evolve? Industry professionals continue to be concerned that regulation hinders innovative practices. If we go through the process of defining the various regulatory webs influencing the water sector, five extensive and overlapping regulatory regimes are uncovered: the water resource regulation system; the service delivery and price regulation system; the built environment regulation system; the environmental health regulation system and the public health regulation system. So, from a regulatory perspective, the first lesson here is that the ‘regulatory space’, as Hancher and Moran (1989) labelled it, for governing urban water is complex. A multitude of interrelated and overlapping regulatory webs exist.

If we then further look carefully at the public health regulation system for drinking water, it is evident that potable water is regulated by a specific legislative regime, but this regime assumes that the water supplied comes only from the publicly owned water corporation. There are no current specific legally binding regulatory requirements for the re-use of other water sources, such as stormwater re-use schemes. Neither is there any clarity at present from the perspective of government policy on whether stormwater, specifically, can be re-used as drinking water. Some water professionals have gone so far as to say that this space was unregulated. Strictly speaking, however, and this is our second lesson from the water sector, no space is truly unregulated. Whilst no specific regulatory regime exists in this case, the general law of negligence imposes a duty of care on those operating stormwater harvesting and re-use regimes not to cause reasonably foreseeable damage to other people (McCallum 2014). In other words, the background law provides a ‘regulatory safety net’ under which activities are governed, at least in theory.

The third lesson here is that innovative activities for new supplies of drinking water can and do occur in the midst of this complex regulatory space. But such advances are usually modest and are being made at a measured pace. In this way, high levels of citizen–public water agency trust are being maintained even in the absence of a specific regulatory regime controlling the re-use of runoff water (McCallum 2014). In other words, on top of our extensive formal water regulation regimes, the water and health professionals themselves regulate each other’s activities in the absence of explicit rules covering the new innovative activity, in order to maintain high
public trust. This socio-professional control, as well as a preference for political risk aversion, in the water sector was strongly influential.

**Financial market regulation post global financial crisis**

In the historical sense, financial upheavals such as the global financial credit crisis of 2008–2009 are not new. But ‘this one was truly different, stunning in its breadth, speed and dramatic consequences’ (Jain and Jordan 2009, p. 416). The American dream became a global nightmare, as Legg and Harris (2009, p. 350) put it. They chart the ‘largest global shock since the Great Depression, inflicting heavy damage on markets and institutions at the core of the financial system’; the emergence of ‘sub-prime’ mortgages in the United States and its ‘low-doc’ loans; how defaulting loans then led to the collapse of Lehman Brothers and the spiral of others that followed. And few countries escaped the contagion.

It is difficult to separate out lessons from the perspective of public policy as distinct from regulatory lessons because financial regulation itself is a complex, power-dependent and technocratic art. But there is little doubt that two factors were central. Jain and Jordan (2009) suggest:

- complexity (where financial engineers baffled their boards and financial products became “incomprehensible gibberish”);
- ideology and denial (where both ‘foolish and irresponsible lending practices’ and the slow reactions of the United States Federal Reserve and United States Treasury exacerbated the crisis rather than ameliorated it).

On the surface, it appears that financial institutions clearly failed to disclose essential information to investors and shareholders (Kirby 2010). But more deeply, the intellectual foundation was the efficient market hypothesis, or as Soros (1998) coined it a decade earlier, ‘market fundamentalism’. Unquestioned faith in the idea of market equilibrium alone driving social progress blinded us to crucial instabilities and the likely chain reaction and meltdown about to unfold. Colourful policy rhetoric after the event saw some commentators quickly blaming poor government policy and ineffective regulators, whilst others saw the GFC as an example of the complete failure of the capitalist model altogether.

Has this rhetoric and failure to learn lessons from history continued today? Yes. Current discussions around the Eurozone crisis likewise fail to acknowledge these conditions as not unique, with the United States having experienced a similar crisis following the financial panic of 1837. The lessons of history are clear here. First, the social trust systems that underpinned financial markets and economies are fragile. Second, the idea of privatising the profits from transactions and socialising the losses during financial crises is a well-worn historical position, if we learn from the 1839 American and British financiers who floated this idea at the time. Third, the social effects of the economic crisis were, in the words of Roberts (2010: 200), ‘profound and sometimes unexpected’. Civil order became difficult to maintain, ‘elections became especially violent’ and a mass movement of workers felt disenfranchised and powerless. Little wonder that many voters ‘resented measures that rewarded foreign and domestic bankers who had played such a large role in triggering the crisis’. All this would be simply academic if not for the eerie parallels between these historical observations from 1837–1848 and the past decade of global regulatory reforms.

Historical parallels aside, what are the primary regulatory themes which have emerged from the aftermath of the GFC? There are several. First, legal rules are important, and continually
improving these is necessary. But they are also insufficient. Much of the regulatory environment is less formal, in the hands of global peer organisations such as the credit rating agencies, or even self-enforced through professional regimes and cultures. Such arrangements can nonetheless be powerful in their influence. Corporate reputation, for instance, can be an effective target for regulatory influence and it may be worthwhile promoting new tools of transparency including innovative uses of naming and shaming. Second, large webs of internationally connected regulatory bodies exist, including credit rating agencies and banking oversight bodies as well as markets themselves. Our debates should rightly continue to question the effectiveness of these schemes, but much of this apparatus is outside the direct authority of the state. Third, in this context, the state clearly competes with others for regulatory attention and indeed for regulatory influence. Fourth, the state continues to play an important role, but it is only one part of a much bigger regulatory world. Indeed, the business sector and private firms themselves may be just as influential as governments when it comes to regulation. For example, Deloittes (2014) studied the red tape burden imposed by Australian governments and reported that the risk and compliance procedures imposed by businesses on themselves resulted in far higher compliance costs than government red tape.

Governing and policy change amidst regulatory capitalism

What does all this mean for the task of governing? Modern governments are increasingly subject to a growing hard legislative governing structure as more legislation is passed. In addition, a crowded set of soft regulatory influences, including new transparency, oversight and accountability mechanisms, also applies. Moreover, this oversight and accountability space itself is being more strongly contested over time. A further significant issue nowadays is risk. Beck’s philosophical comment three decades ago (Beck 1986, 1992) was that modernisation processes have generated today’s ‘risk society’. Put another way, the basic orientation of modern society and its organisation ‘had shifted away from material production toward coping with risks’ (Todd 2015). As a consequence, we are now for the first time in history more preoccupied with the future than the past (Giddens 1999). Our political desire to continue regulating our way towards solutions to public policy problems as we simultaneously accept calls for regulatory reform and lower regulatory burdens suggests an intense degree of ambiguity and confusion in our polity.

Indeed, we could go further. Bernard Crick said in his seminal 1962 book In Defence of Politics, that we lived in a time of ‘brittle cynicism about the activities of politicians’. Exactly half a century later Matthew Flinders’ book (Defending Politics: Why Democracy Matters in the 21st Century), repeated this observation in 2012. He observed that there is strong support for the notion that democracy is now in crisis and that a Parliamentary decline has occurred. Our poor assessment of democracy is in one way surprising. As Mullin (2012) commented, citizens in many countries ‘see no connection between the great social gains of the 20th century – pensions, free secondary education and health care, sick pay, redundancy pay, the minimum wage, protection from unfair dismissal – and the political process that brought them about’. So, how is it, Mullin asks, that in an age when citizens are so demonstrably better off materially as well as better educated, we have ‘managed to manufacture such stunning levels of ignorance, stupidity and indifference’?

Flinders’ assessment of this decline in trust is rather provocative. He suggests that ‘the nature of political rule has altered in ways that have generally made the business of government more difficult’ (Flinders 2014, p. 3). Importantly, he comments that an increasing gap seems to exist between citizens and what they expect of governments on the one hand, and political leaders
and what they are able to achieve on the other. To Flinders, it is this expectations gap that explains much of our disappointment in democracy. Citizens assume the past age of abundance will continue and provide an ever-increasing standard of living, at the same time as the electorate possesses both a growing sense of entitlement yet a diminishing sense of responsibility. This leaves political leaders with a difficult task – to reduce the size of the expectations gap, and remind us that continuing abundance may not occur. This is a message we are unlikely to want to hear. Of course there are other explanatory factors as well as the unrealistic expectations of voters: political leaders, for example, who consistently shoot themselves in the foot through Parliamentary expense scandals or else the discovery of conflicts of interest that risk corrupting democratic processes and certainly destroy trust; as well as a voracious 24-hour news cycle demanded by a ‘feral and destructive media’. Despite all this, Flinders nevertheless remains optimistic and sees politics as a ‘great and civilising human activity’, albeit that it inherently remains muddled and messy looking. So, is democracy really in crisis? Perhaps our personal assessment of this, learning from Flinders’ ideas, depends on what we expect of democracy and how realistic (or unrealistic) our expectations are.

Recalling the major themes of this chapter, however, there is little doubt that the world of public policy and public administration will change. If Flinders’ thesis is right, governments will in fact be more constrained than they have ever been historically, and this will make the task of governing anew and changing policy directions more tricky than ever. Future policy discourse will of course continue to be contested in terms of framing and reframing, and will include loud rhetoric, claims and counter-claims, and self-interested calls for public action. Future discourse will also see continued debates contesting assumptions as to what motivates human behaviours. Strong multidisciplinary inquiries into human behaviour have indeed occurred throughout the past half-century, and contrast with the recent trumpet blowing from fields such as behavioural economics. After all, defining and pursuing the public interest is the central purpose of government.

Importantly, too, future arguments will increasingly revolve around issues of regulatory effectiveness and regulatory legitimacy (Hodge 2006; Levi-Faur 2010). On the first point, fresh questions around the effectiveness of all regulatory tools will occur. We have long known that law as a regulatory tool, for example, has both strengths and weaknesses. It is backed by enforceable sanctions, is democratic and is widely regarded by citizens as ‘legitimate’, but it is also slow, costly and rigid. Soft regulatory tools such as industry codes of practice also have positives, such as intricate knowledge of the domain, flexibility in development, agility in application and low cost, whilst its downsides include the uncertainty around the effectiveness of enforcement activity, and its potential to be regarded as ‘illegitimate’ given its corporate nature. Whatever our personal beliefs here, solid debate on the effectiveness of regulatory tools across all economic and social arenas is a welcome focus. An increasingly important aspect of this effectiveness debate is the issue of ‘systemic effectiveness’ versus ‘individual effectiveness’. Clearly, nationalising a state-owned entity with the objective of stabilising the banking or financial system as a whole is different to issues of individual corporate efficiency or a dash by the government for cash. Likewise, policies directed towards ensuring systems of energy provision or telecommunications services become more resilient if the onset of climate change impacts is different to the resilience of individual facilities or corporate entities. Measures encouraging system stabilisation and resilience will be at the heart of the public interest in future as well as traditional issues of individual merit. Notwithstanding this, we ought to still be asking ‘who is paying for what, here?’, ‘who is getting what from the immediate transactions?’, and ‘who is getting what in the longer term as a result of these measures?’. We also ought be wary of being part of ritualistic regulation or ritualistic compliance, and always ask in which areas
regulation is most energetic and effective. These priority questions will require transparency and clarity not seen to date.

The second point concerning legitimacy is also a welcome focus for future public policy debates. Many of our increasingly technocratic regulatory tools and market structures rightly face the obvious question of democratic legitimacy. Whether it is the complex rules governing electricity markets, the technocracy of food regulation and labelling (at the government’s door, or for halal food or fair trade coffee), the use of private contracts for public purpose, or any one of many other sectors, the ultimate test for civilised governance is one of legitimate common regulatory regimes acting in the public interest.

New uses of tools such as transparency may need to be trialled, even knowing that these may challenge our previous assumptions as to what is public and what is private. Interesting tensions occur here. From a perspective of democratic legitimacy, even if business practices are ‘legal’, that does not mean they are fair or socially legitimate. The returns made by private investors on projects built for public purpose are a case in point. Are such returns a private matter or a legitimate public matter? And in any event, the question of complexity in modern public systems is often not an issue of itself, but an issue of how complexity is handled in the polity. Today’s financial system, which Cioffi (2011, p. 644) characterises as ‘dangerously unstable and destructively extractive’, often reveals serious public interest questions of secrecy and disclosure for governments, including access to information under complex contractual arrangements. In this light, the practice of appealing to ‘commercial-in-confidence’ to shield reforming governments from disclosing contract information results in the public viewing such arrangements as little more than a ‘figleaf’ behind which governments hide. Transparency in the media is another interesting point, because whilst Flinders criticised the power and role of the media, the media itself represents an enormously powerful and useful accountability tool, and one which is democratically crucial.  

Conclusions

The notion of regulation in its broadest form has something important to offer today’s world of public policy and administration. Acknowledging our entry into an era of regulatory capitalism, this chapter concludes that we have an alternative lens into government that helps move policy discussions beyond old debates of deregulation, privatisation and small versus big government. The question ‘what is the role of government?’ will of course remain crucial to ongoing policy and governance debates. But the government’s role will need to be recognised as part of a larger set of overlapping regulatory webs, complexity will continue to rise, and governments will continue to compete with others to influence citizen behaviour. In addition, future governments may well be more constrained and face an increasing gap between what citizens expect of them and what it is realistically possible for them to deliver.

Public policy-making will therefore face difficult choices ahead, and policy-making will become trickier with citizens being more educated and becoming better informed. Public servants, analysts and administrators will thus need to renew their efforts to make clear whose interests are behind new policy initiatives and whose interests underlie the framing of both policy ‘problems’ and comments currently in the public arena. Fresh debates will need to be increasingly informed by discussions around the effectiveness of a much broader range of regulatory tools than has been acknowledged to date. And the democratic legitimacy of both current regulatory assumptions as well as new proposals to solve wicked problems will require careful scrutiny.
Public policy analysts and public administrators will need to be prepared to challenge the existing boundaries between public and private and test old assumptions as to conflicts of interest as we debate the role of transparency, moving forward. And whilst we will clearly continue to ask ‘who is giving what?’ and ‘who is getting what?’ through public policy reforms, there is little doubt that strong contestation will continue on just what constitutes effective regulation and what responses may be proportionate to the harms.

Notes
1 Levi-Faur (2010) observes that regulation may be ‘first party’ (where self-regulation occurs), ‘two party’ (where one party regulates another) or ‘third party’ (where there are three actors: the regulator, a middle party who regulates through say auditing or certifying compliance, and the regulatee). He theorises that with the three sectors (state, market or civil) potentially acting as either a regulator, a regulatee, or a ‘third party’, there are some 27 (i.e. 3³) different forms of third-party regulation technically possible.
2 Indeed Grabosky (1995, p. 529) goes further, suggesting that ‘it is perhaps more useful nowadays to regard a regulatory system as consisting of layered webs of regulatory influence, of which conventional activities of regulatory agencies constitute but a few strands’.
3 The early analysis of British Telecom data in the United Kingdom by Hodge (2000) suggested that regulatory arrangements were some 3.4 times more influential than changing ownership. Likewise, analysis of contracting out data showed that competition drove cost reductions more powerfully than whether the contracts were undertaken by public sector business units or private sector companies.
4 Jain and Jordan (2009, p. 417) cite Buchheit (2008) and give the example of ‘a Cayman Islands special purpose bankruptcy-proof vehicle borrows money from qualified institutional buyers in order to acquire a credit-linked note issued by a Luxembourg entity, guaranteed by a Jersey financing subsidiary of a Cyprus corporation that in turn hedges the risk with a credit default swap written by an Irish entity’.
5 Jain and Jordan (2009) indeed argue that the US Federal Reserve and the US Treasury ‘were a main driver of the chaos’ when they finally did intervene against their overwhelming faith in the market to self-steer.
6 This is an extraordinarily interesting story. Roberts (2010, p. 197) relates how between 1837 and 1848, the US saw the ‘bursting of an asset bubble, followed by a banking collapse, followed next by a depression and defaults by eight of the country’s twenty six state governments’. Indeed, 1837 saw the United States struck with a ‘paralysis of private credit’. This series of events led to extraordinary political turmoil and undermined the stability of the federal system itself. The subsequent restoration of political and economic order was ‘a long and painful process, as enraged voters confronted the costs of inaction and [eventually] accepted new constraints on democratic processes’ (Roberts 2010, p. 196).
7 Mullin (2012) cites ‘a fickle electorate, the triumph of the market over collective values and over the public interest in general [and] rampant consumerism’ as also underpinning our poor assessment of democracy.
8 Centuries of literature have dealt with human behaviour and the human condition. Herb Simon’s writings in economics, including his thoughts on ‘bounded rationality’, go back over five decades. Michel Foucault analysed how humans regulated and governed themselves psychologically through power, knowledge and social control over a similar period. And the commercial advertising industry has likewise been well aware of our human frailties and imperfections in order to boost sales over the past half-century (Jones et al. 2013).
9 History again reminds us that the issue of systemic rescue is not entirely new. A complete banking crash was avoided in the instance of the South Sea Company bubble in 1720 only because of government assistance in stabilizing the banks.
10 Studies such as McMillan and Zoido (2004) suggest that the role played by a free media is surprisingly strong compared to traditional mechanisms such as ministerial responsibility, or even the judiciary. Their study examined the corrupt regime of Peru, which in the 1990s had a full set of democratic institutions. The secret police chief Montesinos, however, systematically undermined them all with bribes. They quantified the bribes paid out. Surprisingly, Montesinos paid a television channel owner about a hundred times what he paid a judge or a politician. Indeed, one single television channel’s
bribe was five times larger than the total of the opposition politicians' bribes. Their conclusion was that the strongest check on the government's power was the news media.

References